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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,924	01/24/2001	Suzanne Dawn Brown	567-02US	9745

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Stuart E. Beck, Esquire  
One Penn Center #601  
1617 J.F.K. Boulevard  
Philadelphia, PA 19103-1806

EXAMINER

AMERSON, LORI BAKER

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 06/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/768,924

Applicant(s)

BROWN, SUZANNE DAWN

Examiner

Lori Baker Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,17 and 25-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,17,25-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 3-6, 17, 27-35 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 36, the word "means" is preceded by the word(s) "of" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Since claims 38-44 are in the chain of dependency from claim 37, they are subjected to the same rejection as claim 37.
4. Claims 1-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 36 and 37 recite limitations referred as printed matter; hence printed matter is nonstatutory subject matter (e.g., "plurality of elements"). See MPEP 706.03(a).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-27, 31-33 and 35-37, 40-42, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin [4137583] in view of Casteel [4733864]. Baldwin discloses a plurality of layers [fig. 1]; means for connecting the layers [16]; the upper layer having a top surface [15]; and the intermediate layer comprise of a shock absorbing material [13] where the exercises are performed on top of the mat. Baldwin discloses all of the limitations of the claimed invention except for a plurality of means on the top surface for foot placement. Casteel teaches a mat for the floor, which has a plurality of elements on the top surface for foot placement. It would have been obvious to one of ordinary skill in the art at the time the invention was made to and is well known in the industry of exercising to design a mat for exercising purposes with instructional or information on the upper surface to assist the user while exercising [the "plurality of elements" is considered printed matter; thus considered nonstatutory subject matter, MPEP 706.03(a). Additionally, Heckel et al teach a bottom layer having a bottom surface that resists sliding with an antiskid netting or sheeting of rubber [col. 1, lines 65-66].

Regarding claims 2 and 36, the top layer is adjacent the intermediate layer [fig. 1] and the bottom layer has a bottom surface [fig. 11] which resists sliding on the surface [col. 4, lines 1-5].

Regarding claims 3-5 and 37, Baldwin discloses all of the limitations of the claimed invention including a 44x44 sized map but does not include the dimensions of one half inch thick and a weight in the range of 4.5 to 5.5 pounds. Where a change in size or range of a prior art reference merely represents a change of degree, and not a change of kind, such change is a design consideration within the skill of the art. In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

Regarding claims 6-11, Casteel teaches a plurality of means on the top surface having a plurality of elements corresponding to areas of foot placement that define geometric figures being rectangular polygons and squares where each corner of the shapes have a mutually distinctive components [fig. 1]. Regarding the shape and distance of the polygons, a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Also, where a change in size or range of a prior art reference merely represents a change of degree, and not a change of kind, such change is a design consideration within the skill of the art. In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

Regarding claim 12, the Applicant should note that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Regarding claims 13-16, Baldwin and Casteel disclose all of the limitations of the claimed invention except for the particular arrangements for facing each other, front to front and rear to rear or side-by side. The applicant should note that a change in ornamental design having no mechanical function is an aesthetic design consideration within the skill of the art. In re Seid, 161 f.2d 229, 73 USPQ 431 (CCPA 1947).

Regarding claims 17 and 25, Baldwin and Casteel disclose all of the limitations of the claimed invention except for the Where a change in size or range of a prior art reference merely represents a change of degree, and not a change of kind, such change is a design consideration within the skill of the art. In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

Regarding claims 18-24, Casteel teaches the mutually components being non-repeating alpha numeric characters contained in geometric shapes arranged for a hopping exercise. The components comprise the numbers 1, 2, 3, and 4. the arrangement of numbers is a change in ornamental design, having no mechanical function is an aesthetic design consideration within the skill of the art. In re Seid, 161 f.2d 229, 73 USPQ 431 (CCPA 1947).

Regarding claim 26, Baldwin and Casteel do not teach connecting the layers by an adhesive. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an adhesive or lamination process to cure the layers together to prevent them from slipping apart.

Regarding claims 27, 31-33,35, and 40-42, the top layer of Baldwin allows the user to exercise where the intermediate layer cushions an exerciser. The natural

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characteristics of shock absorbing material allow it to be antifatiguing to the body and allow it to return to its natural upright state post-impact.

7. Claims 28-30, 34, 38-39 and 43 rejected under 35 U.S.C. 103(a) as being unpatentable over Baldwin, Casteel as applied to claims 1 and 27 above, and further in view of Heckel et al [4147828]. Baldwin and Casteel disclose all of the limitations of the claimed invention except for polyvinyl chloride, closed elastomeric cell foam nitrile butadiene rubber or vinyl coated scrim. Heckel et al teach closed cell elastomeric foam. The Applicant should note that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 967, 125 USPQ 416 (CCPA 1960).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

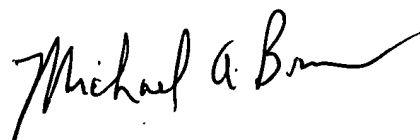
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Monday thru Friday from 8-5 p.m.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

lba  
June 20, 2002



Michael A. Brown  
Primary Examiner